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MICHAEL SEARS

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

| | | |
|-------------------------|---|---------------------------------|
| MICHAEL SEARS, |) | Case No.: 2:22-cv-01624-KJM-KJN |
| |) | |
| Plaintiff, |) | PARTIES' STIPULATION AND |
| |) | PROTECTIVE ORDER |
| vs. |) | |
| |) | |
| CITY OF OROVILLE, et al |) | |
| Defendants. |) | |
| |) | |
| |) | |

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. This is likely to include medical records, sensitive information contained within personnel files, and third party sensitive information such as citizen complaints.

Accordingly, the parties hereby stipulate to the following Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery, and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Order.

1 does not entitle them to file confidential information under seal; Local Rule 141 sets forth the
2 procedures that must be followed and the standards that will be applied when a party seeks
3 permission from the court to file material under seal.

4 **2. DEFINITIONS**

5 2.1 Challenging Party: A Party or Non-Party that challenges the designation of
6 information or items under this Order.

7 2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is
8 generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule
9 of Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
11 well as their support staff).

12 2.4 Designating Party: A Party or Non-Party that designates information or items
13 that it produces in disclosures or in responses to discovery as "CONFIDENTIAL."

14 2.5 Disclosure or Discovery Material: all items or information, regardless of the
15 medium or manner in which it is generated, stored, or maintained (including, among other things,
16 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
17 responses to discovery in this matter.

18 2.6 Expert: A person with specialized knowledge or experience in a matter pertinent
19 to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as
20 a consultant in this action.

21 2.7 House Counsel: Attorneys who are employees of a party to this action. House
22 Counsel does not include Outside Counsel of Record or any other outside counsel.

23 2.8 Non-Party: Any natural person, partnership, corporation, association, or other
24 legal entity not named as a Party to this action.

25 2.9 Outside Counsel of Record: Attorneys who are not employees of a party to this
26 action but are retained to represent or advise a party to this action and have appeared in this action
27 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.
28

1 2.10 Party: Any party to this action, including all of its officers, directors, employees,
2 consultants, retained experts, and Outside Counsel of Record (and their support staff).

3 2.11 Producing Party: A Party or Non-Party that produces Disclosure or Discovery
4 Material in this action.

5 2.12 Professional Vendors: Persons or entities that provide litigation support
6 services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
7 organizing, storing, or retrieving data in any form or medium) and their employees and
8 subcontractors.

9 2.13 Protected Material: Any Disclosure or Discovery Material that is designated as
10 "CONFIDENTIAL."

11 2.14 Receiving Party: A Party that receives Disclosure or Discovery Material from
12 a Producing Party.

13 3. **SCOPE**

14 The protections conferred by this Order cover not only Protected Material (as defined
15 above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
16 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
17 or presentations by Parties or their Counsel that might reveal Protected Material. However, the
18 protections conferred by this Order do not cover the following information: (a) any information
19 that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the
20 public domain after its disclosure to a Receiving Party as a result of publication not involving a
21 violation of this Order, including becoming part of the public record through trial or otherwise;
22 and (b) any information known to the Receiving Party prior to the disclosure or obtained by the
23 Receiving Party after the disclosure from a source who obtained the information lawfully and
24 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at
25 trial shall be governed by a separate agreement or order.
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1 4. **DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations imposed by
3 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
4 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
5 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
6 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
7 including the time limits for filing any motions or applications for extension of time pursuant to
8 applicable law.

9 5. **DESIGNATING PROTECTED MATERIAL**

10 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each
11 Party or Non-Party that designates information or items for protection under this Order must take
12 care to limit any such designation to specific material that qualifies under the appropriate
13 standards. The Designating Party must designate for protection only those parts of material,
14 documents, items, or oral or written communications that qualify, so that other portions of the
15 material, documents, items, or communications for which protection is not warranted are not swept
16 unjustifiably within the ambit of this Order.

17 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
18 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
19 unnecessarily encumber or impede the case development process or to impose unnecessary
20 expenses and burdens on other parties) expose the Designating Party to sanctions.

21 If it comes to a Designating Party's attention that information or items that it designated
22 for protection do not qualify for protection, that Designating Party must promptly notify all other
23 Parties that it is withdrawing the mistaken designation.

24 5.2 Manner and Timing of Designations. Except as otherwise provided in this
25 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
26 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
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1 designated before the material is disclosed or produced. Designation in conformity with this Order
2 requires:

3 (a) for information in documentary form (e.g., paper or electronic documents, but
4 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
5 affix the legend "CONFIDENTIAL" to each page that contains protected material. If only a portion
6 or portions of the material on a page qualifies for protection, the Producing Party also must clearly
7 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

8 A Party or Non-Party that makes original documents or materials available for
9 inspection need not designate them for protection until after the inspecting Party has indicated
10 which material it would like copied and produced. During the inspection and before the
11 designation, all of the material made available for inspection shall be deemed "CONFIDENTIAL."
12 After the inspecting Party has identified the documents it wants copied and produced, the
13 Producing Party must determine which documents, or portions thereof, qualify for protection under
14 this Order.

15 Then, before producing the specified documents, the Producing Party must affix the
16 "CONFIDENTIAL" legend to each page that contains Protected Material. If only a portion or
17 portions of the material on a page qualifies for protection, the Producing Party also must clearly
18 identify the protected portion(s) (e.g., by making appropriate markings in the margins).

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
20 the Designating Party identify on the record, before the close of the deposition, hearing, or other
21 proceeding, all protected testimony.

22 (c) for information produced in some form other than documentary and for any
23 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
24 container or containers in which the information or item is stored the legend "CONFIDENTIAL."
25 If only a portion or portions of the information or item warrant protection, the Producing Party, to
26 the extent practicable, shall identify the protected portion(s).
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1 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
2 designate qualified information or items does not, standing alone, waive the Designating Party's
3 right to secure protection under this Order for such material. Upon timely correction of a
4 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
5 in accordance with the provisions of this Order.

6 6. **CHALLENGING CONFIDENTIALITY DESIGNATIONS**

7 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
8 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
9 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
10 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
11 challenge a confidentiality designation by electing not to mount a challenge promptly after the
12 original designation is disclosed.

13 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
14 process by providing written notice of each designation it is challenging and describing the basis
15 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice
16 must recite that the challenge to confidentiality is being made in accordance with this specific
17 paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith
18 and must begin the process by conferring within 14 calendar days of the date of service of notice.
19 In conferring, the Challenging Party must explain the basis for its belief that the confidentiality
20 designation was improper and must give the Designating Party an opportunity to review the
21 designated material, to reconsider the circumstances, and, if no change in designation is offered,
22 to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage
23 of the challenge process only if it has engaged in this meet and confer process first or establishes
24 that the Designating Party is unwilling to participate in the meet and confer process in a timely
25 manner.
26

27 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
28 intervention, the parties shall follow the procedures set forth in Local Rule 251 to resolve the

1 challenge. The burden of persuasion in any such challenge proceeding shall be on the Designating
2 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
3 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
4 sanctions. Until the court rules on the challenge, the Parties shall continue to afford the material in
5 question the level of protection to which it is entitled under the Producing Party's designation.

6 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 7.1 Basic Principles. Receiving Party may use Protected Material that is disclosed
8 or produced by another Party or by a Non-Party in connection with this case only for prosecuting,
9 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
10 the categories of persons and under the conditions described in this Order. When the litigation has
11 been terminated, a Receiving Party must comply with the provisions of Section 13 below.
12 Protected Material must be stored and maintained by a Receiving Party at a location and in a secure
13 manner that ensures that access is limited to the persons authorized under this Order.

14 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
15 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
16 disclose any information or item designated "CONFIDENTIAL" only to:

17 (a) the Receiving Party's Outside Counsel of Record in this action, as well as
18 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
19 information for this litigation and who have signed the "Acknowledgment and Agreement to Be
20 Bound" that is attached hereto as Exhibit A;

21 (b) the officers, directors, and employees (including House Counsel) of the
22 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
23 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

24 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
25 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement
26 to Be Bound" (Exhibit A);

27 (d) the court and its personnel;
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1 (e) court reporters and their staff, professional jury or trial consultants, mock jurors,
2 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
3 have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

4 (f) during their depositions, witnesses in the action to whom disclosure is
5 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
6 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. If counsel
7 for the parties stipulate, or the Designating Party requests separate binding of Protected Material,
8 pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material
9 must be separately bound by the court reporter and may not be disclosed to anyone except as
10 permitted under this Stipulated Protective Order;

11 (g) the author or recipient of a document containing the information or a custodian
12 or other person who otherwise possessed or knew the information.

13 8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
14 **OTHER LITIGATION**

15 If a Party is served with a subpoena or a court order issued in other litigation that
16 compels disclosure of any information or items designated in this action as "CONFIDENTIAL,"
17 that Party must:

18 (a) promptly notify in writing the Designating Party. Such notification shall include
19 a copy of the subpoena or court order;

20 (b) promptly notify in writing the party who caused the subpoena or order to issue
21 in the other litigation that some or all of the material covered by the subpoena or order is subject
22 to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
23 and
24

25 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
26 Designating Party whose Protected Material may be affected.

27 If the Designating Party timely seeks a protective order, the Party served with the
28 subpoena or court order shall not produce any information designated in this action as

1 "CONFIDENTIAL" before a determination by the court from which the subpoena or order issued,
2 unless the Party has obtained the Designating Party's permission. The Designating Party shall bear
3 the burden and expense of seeking protection in that court of its confidential material, and nothing
4 in these provisions should be construed as authorizing or encouraging a Receiving Party in this
5 action to disobey a lawful directive from another court.

6 9. **A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**
7 **IN THIS LITIGATION**

8 (a) The terms of this Order are applicable to information produced by a Non-Party
9 in this action and designated as "CONFIDENTIAL." Such information produced by Non-Parties
10 in connection with this litigation is protected by the remedies and relief provided by this Order.
11 Nothing in these provisions should be construed as prohibiting a Non-Party from seeking
12 additional protections.

13 (b) In the event that a Party is required, by a valid discovery request, to produce a
14 Non-Party's confidential information in its possession, and the Party is subject to an agreement
15 with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

16 (1) promptly notify in writing the Requesting Party and the Non-Party that
17 some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

18 (2) promptly provide the Non-Party with a copy of the Stipulated Protective
19 Order in this litigation, the relevant discovery request(s), and a reasonably specific description of
20 the information requested; and

21 (3) make the information requested available for inspection by the Non-Party.

22 (c) If the Non-Party fails to object or seek a protective order from this court within
23 14 days of receiving the notice and accompanying information, the Receiving Party may produce
24 the Non-Party's confidential information responsive to the discovery request. If the Non-Party
25 timely seeks a protective order, the Receiving Party shall not produce any information in its
26 possession or control that is subject to the confidentiality agreement with the Non-Party before a
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1 determination by the court. Absent a court order to the contrary, the Non-Party shall bear the
2 burden and expense of seeking protection in this court of its Protected Material.

3 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

4 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
5 Material to any person or in any circumstance not authorized under this Stipulated Protective
6 Order, the Receiving Party must immediately(a) notify in writing the Designating Party of the
7 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected
8 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the
9 terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and
10 Agreement to Be Bound" that is attached hereto as Exhibit A.

11 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
12 **PROTECTED MATERIAL**

13 When a Producing Party gives notice to Receiving Parties that certain inadvertently
14 produced material is subject to a claim of privilege or other protection, the obligations of the
15 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
16 is not intended to modify whatever procedure may be established in an e-discovery order that
17 provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
18 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
19 communication or information covered by the attorney-client privilege or work product protection;
20 the parties may incorporate their agreement in the stipulated protective order submitted to the
21 court.

22 **12. MISCELLANEOUS**

23
24 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person
25 to seek its modification by the court in the future.

26 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
27 Order no Party waives any right it otherwise would have to object to disclosing or producing any
28 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no

1 Party waives any right to object on any ground to use in evidence of any of the material covered
2 by this Protective Order.

3 12.3 Filing Protected Material. Without written permission from the Designating
4 Party or a court order secured after appropriate notice to all interested persons, a Party may not file
5 in the public record in this action any Protected Material. A Party that seeks to file under seal any
6 Protected Material must comply with Local Rule 141. Protected Material may only be filed under
7 seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If
8 a Receiving Party's request to file Protected Material under seal pursuant to Local Rule 141 is
9 denied by the court, then the Receiving Party may file the information in the public record unless
10 otherwise instructed by the court.

11 13. **FINAL DISPOSITION**

12 Within 60 calendar days after the final disposition of this action, as defined in Section
13 4, upon written notification served by the Producing or Designating Party, each Receiving Party
14 must return all Protected Material to the Producing Party or destroy such material. As used in this
15 subdivision, all Protected Material" includes all copies, abstracts, compilations, summaries, and
16 any other format reproducing or capturing any of the Protected Material. Whether the Protected
17 Material is returned or destroyed; the Receiving Party must submit a written certification to the
18 Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day
19 deadline that (1) identifies (by category, where appropriate) all the Protected Material that was
20 returned or destroyed, and (2) affirms that the Receiving Party has not retained any copies,
21 abstracts, compilations, summaries, or any other format reproducing or capturing any of the
22 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
23 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
24 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant
25 and expert work product, even if such materials contain Protected Material. Any such archival
26 copies that contain or constitute Protected Material remain subject to this Protective Order as set
27 forth in Section 4.
28

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2
3 Dated: August 23, 2023

ANGELO, KILDAY & KILDUFF, LLP

4 /s/ William J. Bittner

5 By: _____

CAROLEE G. KILDUFF

6 WILLIAM J. BITTNER

7 Attorneys for Defendant CITY OF

8 OROVILLE

9 Dated: August 23, 2023

LAW OFFICES OF LARRY L.BAUMBACH

10 /s/ Larry L. Baumbach

11 By: _____

LARRY L. BAUMBACH

12 Attorney for Plaintiff

13
14 **ORDER**

15 The court has reviewed the parties' stipulated protective order. (See ECF No. 32.) The
16 stipulation comports with the relevant authorities and the court's applicable local rule. See L.R.
17 141.1. The court APPROVES the protective order, subject to the following clarification. Once an
18 action is closed, "the court will not retain jurisdiction over enforcement of the terms of any
19 protective order filed in that action." L.R. 141.1(f); see also, e.g., MD Helicopters, Inc. v.
20 Aerometals, Inc., 2017 WL 495778 (E.D. Cal., Feb. 03, 2017) (noting that courts in the district
21 generally do not retain jurisdiction for disputes concerning protective orders after closure of the
22 case). Thus, the court will not retain jurisdiction over this protective order once the case is closed.

23 Dated: August 23, 2023

24
25 scar.1624



26 KENDALL J. NEWMAN
27 UNITED STATES MAGISTRATE JUDGE
28

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Eastern District of California on _____
[date] in the case of *Michael Sears v. City of Oroville, et al.* No. 2:22-cv-01624-KJM-KJN. I
agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or entity
except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Eastern District of California for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
_____ [print or type full address and telephone
number] as my California agent for service of process in connection with this action or any
proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State
where sworn and signed: _____

Printed Name: _____

Signature: _____